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UNITED STATES BANKRUPTCY COURT FOR
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

10 In re Case No. 2:20-bk-21022-BR
11
12 GIRARDI KEESE, Chapter 7
13
14 Debtor.

15
16 ELISSA D. MILLER, solely in her capacity as
17 chapter 7 trustee,
18 Plaintiff,
19 vs.
20 LOYOLA HIGH SCHOOL OF LOS
21 ANGELES, a California nonprofit corporation,
22 Defendant

Adv. No. 2:23-ap-01010-BR

**DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT FOR
(1) AVOIDANCE AND RECOVERY OF
FRAUDULENT TRANSFERS,
(2) PRESERVATION OF FRAUDULENT
TRANSFERS, AND (3) DISALLOWANCE
OF CLAIMS**

Status Conference:
Date: July 18, 2023
Time: 10:00 a.m.
Ctrm: 1668

1 Defendant Loyola High School of Los Angeles, a California nonprofit corporation
2 ("Defendant") hereby answers and responds (this "Answer") to the *Complaint for (1) Avoidance*
3 *and Recovery of Fraudulent Transfers, (2) Preservation of Fraudulent Transfers, and (3)*
4 *Disallowance of Claims* (the "Complaint") [ECF No. 1], filed in this Court (the "Bankruptcy
5 Court") on January 4, 2023 on behalf of plaintiff and chapter 7 trustee Elissa D. Miller ("Plaintiff").
6 Each numbered paragraph of this Answer constitutes Defendant's response to the corresponding
7 numbered paragraph of the Complaint.¹

ANSWER TO COMPLAINT

Statement of Jurisdiction, Nature of Proceeding, and Venue

10 1. Answering Paragraph 1, Defendant admits that this proceeding relates to the
11 bankruptcy case of *In re Girardi Keese*, bearing Case No. 2:20-bk-21022-BR, which is a case under
12 chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”), and which is pending in
13 the Bankruptcy Court. The remaining allegations in Paragraph 1 state legal conclusions to which
14 no response is required. To the extent that those allegations do require a response, Defendant denies
15 the allegations. Defendant states, in compliance with Rule 7012(b) of the Federal Rules of
16 Bankruptcy Procedure, that to the extent that this proceeding, in whole or in part, is a core
17 proceeding involving any “*Stern*” claims or is a non-core proceeding, Defendant does not consent
18 to entry of final orders or judgment by the Bankruptcy Court.

19 2. The allegations in Paragraph 2 state legal conclusions to which no response is
20 required. To the extent that those allegations do require a response, Defendant denies the
21 allegations.

Relevant Background, Parties, and Allegations Common to All Claims for Relief

23 3. Defendant lacks knowledge or information sufficient to form a belief as to the truth
24 of the allegations in Paragraph 3 and, on that basis, denies those allegations.

25 4. Defendant lacks knowledge or information sufficient to form a belief as to the truth
26 of the allegations in Paragraph 4 and, on that basis, denies those allegations.

27 5. Defendant lacks knowledge or information sufficient to form a belief as to the truth

¹ The capitalized term “Paragraph” as used herein refers to a paragraph of the Complaint.

1 of the allegations in Paragraph 5 and, on that basis, denies those allegations.

2 6. Defendant lacks knowledge or information sufficient to form a belief as to the truth
3 of the allegations in Paragraph 6 and, on that basis, denies those allegations.

4 7. The allegations in Paragraph 7 state legal conclusions to which no response is
5 required. To the extent that those allegations do require a response, Defendant lacks knowledge or
6 information sufficient to form a belief as to the truth of the allegations in Paragraph 7 and, on that
7 basis, denies those allegations.

8 8. The allegations in Paragraph 8 state legal conclusions to which no response is
9 required. To the extent that those allegations do require a response, Defendant lacks knowledge or
10 information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and, on that
11 basis, denies those allegations.

12 9. Answering Paragraph 9, Defendant admits that it is a California nonprofit
13 corporation authorized to do business, and is doing business, in the State of California, and further
14 admits that it has a business address of 1901 Venice Boulevard, Los Angeles, California 90006.
15 The remaining allegations in Paragraph 9 state legal conclusions to which no response is required.
16 To the extent that those allegations do require a response, Defendant denies the allegations.

17 10. Defendant lacks knowledge or information sufficient to form a belief as to the truth
18 of the allegations in Paragraph 10 and, on that basis, denies those allegations.

19 11. Defendant lacks knowledge or information sufficient to form a belief as to the truth
20 of the allegations in Paragraph 11 and, on that basis, denies those allegations. Without limiting the
21 generality of the foregoing, Defendant is in the process of collecting and reviewing any records it
22 possesses that may be relevant to the allegations in Paragraph 11.

23 12. Defendant lacks knowledge or information sufficient to form a belief as to the truth
24 of the allegations in Paragraph 12 and, on that basis, denies those allegations. Without limiting the
25 generality of the foregoing, Defendant is in the process of collecting and reviewing any records it
26 possesses that may be relevant to the allegations in Paragraph 12.

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First Claim for Relief

(Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 544(b) and 550(a) and California Civil Code §§ 3439.04(a)(1), 3439.07, and 3439.09)

13. Answering Paragraph 13, Defendant realleges and incorporates herein the contents of paragraphs 1 through 12 above, as though fully set forth herein.

14. The allegations in Paragraph 14 state legal conclusions to which no response is required. To the extent that those allegations do require a response, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 and, on that basis, denies those allegations.

15. The allegations in Paragraph 15 state legal conclusions to which no response is required. To the extent that those allegations do require a response, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and, on that basis, denies those allegations.

16. The allegations in Paragraph 16 state legal conclusions to which no response is required. To the extent that those allegations do require a response, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and, on that basis, denies those allegations.

17. The allegations in Paragraph 17 state legal conclusions to which no response is required. To the extent that those allegations do require a response, Defendant denies the allegations.

Second Claim for Relief

(Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 544(b) and 550 and California Civil Code §§ 3439.04(a)(2) and 3439.07)

18. Answering Paragraph 18, Defendant realleges and incorporates herein the contents of paragraphs 1 through 12 above, as though fully set forth herein.

19. The allegations in Paragraph 19 state legal conclusions to which no response is required. To the extent that those allegations do require a response, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and, on that

1 basis, denies those allegations.

2 20. The allegations in Paragraph 20 state legal conclusions to which no response is
3 required. To the extent that those allegations do require a response, Defendant lacks knowledge or
4 information sufficient to form a belief as to the truth of the allegations in Paragraph 20 and, on that
5 basis, denies those allegations.

6 21. The allegations in Paragraph 21 state legal conclusions to which no response is
7 required. To the extent that those allegations do require a response, Defendant lacks knowledge or
8 information sufficient to form a belief as to the truth of the allegations in Paragraph 21 and, on that
9 basis, denies those allegations.

10 22. The allegations in Paragraph 22 state legal conclusions to which no response is
11 required. To the extent that those allegations do require a response, Defendant denies the
12 allegations.

13 **Third Claim for Relief**

14 **(Avoidance and Recovery of Fraudulent Transfers Pursuant to
15 11 U.S.C. §§ 548(a)(1)(A) and 550)**

16 23. Answering Paragraph 23, Defendant realleges and incorporates herein the contents
17 of paragraphs 1 through 12 above, as though fully set forth herein.

18 24. The allegations in Paragraph 24 state legal conclusions to which no response is
19 required. To the extent that those allegations do require a response, Defendant lacks knowledge or
20 information sufficient to form a belief as to the truth of the allegations in Paragraph 24 and, on that
21 basis, denies those allegations.

22 25. The allegations in Paragraph 25 state legal conclusions to which no response is
23 required. To the extent that those allegations do require a response, Defendant lacks knowledge or
24 information sufficient to form a belief as to the truth of the allegations in Paragraph 25 and, on that
25 basis, denies those allegations.

26 26. The allegations in Paragraph 26 state legal conclusions to which no response is
27 required. To the extent that those allegations do require a response, Defendant lacks knowledge or
28 information sufficient to form a belief as to the truth of the allegations in Paragraph 26 and, on that

basis, denies those allegations.

27. The allegations in Paragraph 27 state legal conclusions to which no response is required. To the extent that those allegations do require a response, Defendant denies the allegations.

Fourth Claim for Relief

**(Avoidance and Recovery of Fraudulent Transfers Pursuant to
11 U.S.C. §§ 548(a)(1)(B) and 550)**

28. Answering Paragraph 28, Defendant realleges and incorporates herein the contents of paragraphs 1 through 12 above, as though fully set forth herein.

29. The allegations in Paragraph 29 state legal conclusions to which no response is required. To the extent that those allegations do require a response, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 and, on that basis, denies those allegations.

30. The allegations in Paragraph 30 state legal conclusions to which no response is required. To the extent that those allegations do require a response, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 and, on that basis, denies those allegations.

31. The allegations in Paragraph 31 state legal conclusions to which no response is required. To the extent that those allegations do require a response, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 and, on that basis, denies those allegations.

32. The allegations in Paragraph 32 state legal conclusions to which no response is required. To the extent that those allegations do require a response, Defendant denies the allegations.

Fifth Claim for Relief

(Recovery of Avoided Transfers or the Value Thereof Pursuant to 11 U.S.C. § 550(a))

33. Answering Paragraph 33, Defendant realleges and incorporates herein the contents of paragraphs 1 through 12 above, as though fully set forth herein.

34. The allegations in Paragraph 34 state legal conclusions to which no response is required. To the extent that those allegations do require a response, Defendant denies the allegations.

35. The allegations in Paragraph 35 state legal conclusions to which no response is required. To the extent that those allegations do require a response, Defendant denies the allegations.

Sixth Claim for Relief

(Preservation of Transfers Avoided Pursuant to 11 U.S.C. § 551)

9 36. Answering Paragraph 36, Defendant realleges and incorporates herein the contents
10 of paragraphs 1 through 12 above, as though fully set forth herein.

11 37. The allegations in Paragraph 37 state legal conclusions to which no response is
12 required. To the extent that those allegations do require a response, Defendant denies the
13 allegations.

Seventh Claim for Relief

(For Disallowance of Claims Pursuant to 11 U.S.C. § 502(d))

16 38. Answering Paragraph 38, Defendant realleges and incorporates herein the contents
17 of paragraphs 1 through 12 above, as though fully set forth herein.

18 39. The allegations in Paragraph 39 state legal conclusions or prayers for relief to which
19 no response is required. To the extent that those allegations do require a response, Defendant denies
20 the allegations and rejects Plaintiff's request as inequitable and entirely inconsistent with the
21 relevant provisions of the Bankruptcy Code.

Reservation of Rights

23 40. The allegations in Paragraph 40 state legal conclusions or reservations of rights to
24 which no response is required. To the extent that those allegations do require a response, Defendant
25 denies the allegations and further denies that Plaintiff has any valid claims, known or unknown,
26 against Defendant.

27 41. The allegations in Paragraph 41 state legal conclusions or reservations of rights to
28 which no response is required. To the extent that those allegations do require a response, Defendant

1 denies the allegations and further denies that Plaintiff has any valid claims, known or unknown,
2 against Defendant.

3 **AFFIRMATIVE DEFENSES**

4 Defendant asserts the following affirmative defenses to the Complaint:

5 **First Affirmative Defense**

6 **(Failure to State a Claim)**

7 As a separate affirmative defense to the Complaint and to each purported claim for relief
8 thereof, Defendant submits that the Complaint fails to state a claim upon which relief can be
9 granted.

10 **Second Affirmative Defense**

11 **(Good Faith and Reasonably Equivalent Value)**

12 As a separate affirmative defense to the Complaint and to each purported claim for relief
13 thereof, Defendant submits that the Complaint is barred, in whole or in part, because Defendant
14 acted in good faith and/or Defendant gave, and the debtor, Girardi Keese (the “Debtor”), received,
15 value including reasonably equivalent value in exchange for the alleged transfers described in the
16 Complaint and Defendant is entitled to assert a lien, retain any such transfer, and/or enforce any
17 such obligation.

18 **Third Affirmative Defense**

19 **(Good Faith and Value)**

20 As a separate affirmative defense to the Complaint and to each purported claim for relief
21 thereof, Defendant submits that the Complaint is barred, in whole or in part, because Defendant
22 was a good faith transferee or obligee and gave value to the Debtor and is entitled to a lien,
23 enforcement of any obligation incurred, or a reduction in the amount of alleged liability.

24 **Fourth Affirmative Defense**

25 **(Good Faith, Value, and Without Knowledge of Voidability)**

26 As a separate affirmative defense to the Complaint and to each purported claim for relief
27 thereof, Defendant submits that the Complaint is barred, in whole or in part, because Defendant
28 was not the initial transferee thereof, acted in good faith without knowledge of the voidability, and

1 Defendant gave value in exchange for the alleged transfers described in the Complaint and
2 Defendant is entitled to assert a lien, retain any such transfer, and/or enforce any such obligation.

3 **Fifth Affirmative Defense**

4 **(Setoff and Recoupment)**

5 As a separate affirmative defense to the Complaint and to each purported claim for relief
6 thereof, Defendant submits that the Complaint is barred, in whole or in part, by the doctrine of
7 setoff and/or recoupment.

8 **Sixth Affirmative Defense**

9 **(Statutes of Limitation and Statute of Repose)**

10 As a separate affirmative defense to the Complaint and to each purported claim for relief
11 thereof, Defendant submits that the Complaint is barred, in whole or in part, by the applicable
12 statutes of limitations, extinguishment, and/or statutes of repose.

13 **Seventh Affirmative Defense**

14 **(Laches)**

15 As a separate affirmative defense to the Complaint and to each purported claim for relief
16 thereof, Defendant submits that the Complaint is barred, in whole or in part, by the doctrine of
17 laches.

18 **Eighth Affirmative Defense**

19 **(Transfers Not of Debtor's Property)**

20 As a separate affirmative defense to the Complaint and to each purported claim for relief
21 thereof, Defendant submits that the Complaint is barred, in whole or in part, because the alleged
22 transfers described in the Complaint were not paid from the Debtor's funds and are therefore not
23 avoidable or recoverable by Plaintiff as avoidable transfers.

24 **Ninth Affirmative Defense**

25 **(Solvency)**

26 As a separate affirmative defense to the Complaint and to each purported claim for relief
27 thereof, Defendant submits that the Complaint is barred, in whole or in part, because the Debtor
28 was not insolvent or inadequately capitalized (including lacking sufficient assets) at the time of the

1 alleged transfers described in the Complaint and the Debtor was not rendered insolvent, or without
2 sufficient capital or assets, as a result of such alleged transfers.

3 **Tenth Affirmative Defense**

4 **(Charitable Contribution)**

5 As a separate affirmative defense to the Complaint and to each purported claim for relief
6 thereof, Defendant submits that the Complaint is barred, in whole or in part, because Defendant is
7 a qualified religious or charitable entity or organization and, on information and belief, any transfer
8 did not exceed 15% of the gross annual income of the Debtor for the year in which the transfer was
9 made or was consistent with the past practices of the Debtor in making charitable contributions.

10 **Eleventh Affirmative Defense**

11 **(Ordinary Course of Business)**

12 As a separate affirmative defense to the Complaint and to each purported claim for relief
13 thereof, Defendant submits that the Complaint is barred, in whole or in part, because the alleged
14 transfers described in the Complaint were made in the ordinary course of business or financial
15 affairs of the Debtor and Defendant or otherwise made according to ordinary business terms.

16 **Twelfth Affirmative Defense**

17 **(Contemporaneous Exchange)**

18 As a separate affirmative defense to the Complaint and to each purported claim for relief
19 thereof, Defendant submits that the Complaint is barred, in whole or in part, because the alleged
20 transfers described in the Complaint were intended to be and were in fact part of a substantially
21 contemporaneous exchange for new value given to the Debtor.

22 **Thirteenth Affirmative Defense**

23 **(Subsequent New Value)**

24 As a separate affirmative defense to the Complaint and to each purported claim for relief
25 thereof, Defendant submits that the Complaint is barred, in whole or in part, because Defendant
26 gave subsequent new value to, or for the benefit of, the Debtor in exchange for the alleged transfers
27 described in the Complaint.

28

Fourteenth Affirmative Defense

(Waiver)

As a separate affirmative defense to the Complaint and to each purported claim for relief thereof, Defendant submits that the Complaint is barred, in whole or in part, by the doctrine of waiver.

Fifteenth Affirmative Defense

(Estoppel)

As a separate affirmative defense to the Complaint and to each purported claim for relief thereof, Defendant submits that the Complaint is barred, in whole or in part, by the doctrine of estoppel.

Sixteenth Affirmative Defense

(Unclean Hands)

As a separate affirmative defense to the Complaint and to each purported claim for relief thereof, Defendant submits that the Complaint is barred, in whole or in part, by the doctrine of unclean hands.

Seventeenth Affirmative Defense

(Right to Indemnification)

Should Plaintiff recover damages from Defendant, Defendant is entitled to indemnification, either in whole or in part, from third parties whose conduct caused Plaintiff's damages, if any.

Reservation of Rights

Defendant presently lacks knowledge or information sufficient to form a belief as to whether it has additional, yet unstated, affirmative defenses. Accordingly, Defendant expressly reserves all rights to assert additional affirmative defenses that may become known through discovery or otherwise, and for such additional affirmative defenses to relate back to this Answer.

WHEREFORE, Defendant denies that Plaintiff is entitled to any relief as a result of the allegations in the Complaint and prays for judgment as follows:

- 1 1. That Plaintiff take nothing against Defendant by way of the Complaint;
- 2 2. That the Complaint be dismissed, with prejudice, as against Defendant;
- 3 3. That Defendant be awarded its costs;
- 4 4. That Defendant be awarded its attorneys' fees; and
- 5 5. That Defendant be awarded such other relief as this Court deems just and proper.

6
7 Dated: April 25, 2023

O'MELVENY & MYERS LLP

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9 By: /s/ Karen Rinehart
10 Stephen H. Warren
Karen Rinehart

11 Attorneys for Defendant Loyola High School
12 of Los Angeles, a California nonprofit
corporation

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